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4 **BEFORE THE SUPREME COURT OF**
5 **THE STATE OF ARIZONA**

6 In the Matter of

Supreme Court No. R-08-0011

7 PETITION TO AMEND RULE 31(d)
8 OF THE RULES OF THE SUPREME
COURT OF ARIZONA

**Comments of the State Bar of
Arizona Generally Supporting
Petition to Amend Rule 31(d)**

9
10 The Arizona Corporation Commission (the Commission) seeks to add a
11 28th exception to Rule 31(d), which currently lists 27 exemptions to the
12 unauthorized practice of law (UPL). If the Court grants the petition, the new
13 exemption would allow public service corporations, interim appointed operators,
14 and non-profit corporations to be represented by a designated officer, employee
15 or member, rather than by a licensed lawyer, in matters before the Commission.

16 The State Bar generally supports the petition and agrees that the
17 Commission states a legitimate public need for non-lawyer advocates to represent
18 certain entities before it. The State Bar, however, requests two modifications to
19 the proposed amendment.
20

1 First, the first undesignated paragraph (following the three lettered
2 paragraphs) dealing with class representatives should be deleted. The main
3 provisions of proposed Rule 31(d)(28) would allow single entities to designate
4 their own non-lawyer officers, employees or members to represent them before
5 the Commission. The proposed rule essentially authorizes entities that otherwise
6 would need legal counsel to be represented by non-lawyers. The first
7 undesignated paragraph, however, also allows a *class* to appear via its non-lawyer
8 class representative. While a non-lawyer may be a class party representative, that
9 non-lawyer should not also be allowed to appear for the class of separate
10 individuals or entities. The non-lawyer class representative would not be
11 representing simply his or her own individual entity, but a group of entities or
12 individuals. None of the other specific exceptions in Rule 31(d) allow a non-
13 lawyer to represent anyone other than an individual or individual entity. Allowing
14 a non-lawyer class representative to appear before the Commission on behalf of
15 all of the members of the class unreasonably expands the limited exceptions
16 allowed under Rule 31(d).

17 Second, the last paragraph should be amended to conform to existing
18 language referring to "lay representation" in another Rule 31 exception. Rule
19 31(d)(9) allows an officer or employee of a corporation or unincorporated
20 association who is not an active State Bar member to appear before the Superior

1 Court in general stream adjudication proceedings. That rule provides that the
2 court may nonetheless require "the substitution of counsel whenever it determines
3 that *lay representation* is interfering with the orderly progress of the litigation or
4 imposing undue burdens on the other litigants." (Emphasis added.) The State Bar
5 requests that the current proposal be amended to use similar language so that the
6 Commission or presiding officer "may require ~~the substitution of counsel~~ in lieu
7 of lay representation."

8 With the State Bar's recommendations, the proposed rule would read (the
9 interlineations are the recommended changes):

10 (d) Exemptions

11 * * *

12 28. In matters before the Arizona Corporation Commission, a
13 public service corporation, an interim operator appointed by the
14 Commission, or a non-profit organization may be represented by a
15 corporate officer, employee, or a member who is not an active
16 member of the state bar if:

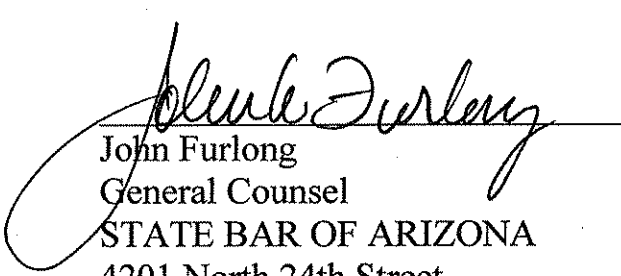
- 17 (A) the public service corporation, interim operator, or non-
18 profit organization has specifically authorized the
19 officer, employee, or member to represent it in the
20 particular matter,
- (B) such representation is not the person's primary duty to
the public service corporation, interim operator, or non-
profit organization, but is secondary or incidental to
such person's duties relating to the management or
operation of the public service corporation, interim
operator, or non-profit organization, and
- (C) the person is not receiving separate or additional
compensation (other than reimbursement for costs) for
such representation.

1 ~~In matters before the Commission where a class of parties is created~~
2 ~~pursuant to R14-3-104(C), the members of the class or the presiding~~
3 ~~officer may designate one of the class members who is not an active~~
4 ~~member of the state bar to be the class representative.~~

5 Notwithstanding the foregoing provisions, the Commission or
6 presiding officer may require the substitution of counsel in lieu of
7 lay representation, whenever it determines that lay representation is
8 interfering with the orderly progress of the proceeding, imposing
9 undue burdens on the other parties, or causing harm to the parties
10 represented.

11 With these two specific revisions, the State Bar supports the
12 Commission's Rule 28 petition.

13 **RESPECTFULLY SUBMITTED** this 19th day of May 2009.

14 
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20 Electronic copy filed with the
Clerk of the Supreme Court of Arizona
this 19th day of May, 2009.

by: Kathleen A. Lundgren